

1 Carl E. G. Arnold
2 Nevada State Bar Number - 8358
3 1428 S. Jones Boulevard
4 Las Vegas, Nevada 89146
Telephone: 702.358.1138
carl@cegalawgroup.com

5 Robert L. J. Spence, Jr. (*pro hac vice* approved)
6 Kristina A. Woo (*pro hac vice* approved)
7 80 Monroe Avenue, Garden Suite One
8 Memphis, Tennessee 38103
Telephone: 901.312.9160
9 rspence@spence-lawfirm.com
kwoo@spence-lawfirm.com

10 **UNITED STATES DISTRICT COURT FOR THE**
11 **DISTRICT OF NEVADA**

Case No.: 2:21-cv-00177-GMN-DJA

12 EURO MOTOR SPORT INC., and
13 SAMMIE BENSON,

14 Plaintiffs,

15 vs.

16 ARB LAS VEGAS d/b/a
17 LAS VEGAS TOWING,

18 Defendant.
19

**STIPULATION TO EXTEND
DEADLINES TO COMPLETE
DISCOVERY, FILE DISPOSITIVE
MOTIONS, AND FILE JOINT PRE-
TRIAL ORDER
(Second Request)**

20
21
22 COME NOW, the Plaintiffs, Euro Motor Sport, Inc., and Sammie, Benson
23 (collectively "Plaintiffs"), and Defendant, ARB Las Vegas d/b/a Las Vegas Towing
24 ("Defendant"), by and through undersigned counsel of record, and in compliance with
25 LR IA 6-1, and announce to the Court that the parties agree and stipulate to extend
26
27
28

1 certain deadlines in this cause. This is the second stipulation for extension of time in
 2 this cause ("Second Stipulation").¹

3 This Second Stipulation requests extension of the following deadlines:

4 (1) to complete discovery ("Discovery Deadline") which is currently August 20,
 5 2021 to November 29, 2021;
 6

7 (2) to file dispositive motions ("Dispositive Motion Deadline") which is currently
 8 September 19, 2021 to December 29, 2021; and

9 (3) to file a joint pre-trial order ("Joint Pre-Trial Order Deadline") which is currently
 10 October 19, 2021 to January 28, 2022.
 11

12 Although the Discovery Deadline has already passed, the parties assert this
 13 Second Stipulation is timely submitted due to excusable neglect. On or about August
 14 12, 2021, the parties filed a Joint Motion (ECF No. 35) and Stipulation (ECF No. 36)
 15 requesting extension of the deadlines referenced in the Second Stipulation. Although
 16 the Court found the parties had shown good cause to extend the deadlines, it denied
 17 the Joint Motion (ECF No. 35) and Stipulation (ECF No. 36) without prejudice having
 18 found the parties failed to include proposed concrete deadlines. See ECF No. 37.
 19

20 As a result of the foregoing, the parties submit this Second Stipulation proposing
 21 concrete deadlines. In compliance with LR 26-3, the parties submit the following:
 22

23 24 **I. STATEMENT SPECIFYING THE DISCOVERY COMPLETED**

25 Presently in this cause, Fed. R. Civ. P. 26(a)(1)(A) Initial Disclosures have been
 26 exchanged by the parties. Plaintiffs served their Initial Disclosures on April 28, 2021
 27

28 ¹ The first stipulation to extend deadlines related to the extension of time to add parties and amend pleadings only.

1 and their Supplemental Initial Disclosures on May 4, 2021. Defendant served its Initial
2 Disclosures on April 28, 2021.

3 Defendant propounded written discovery on May 3, 2021, and Plaintiff's responded
4 to Defendant's written discovery on May 25, 2021.

5 Plaintiff propounded written discovery on May 4, 2021, and Defendant responded
6 to written discovery on May 27, 2021.

7 8 9 **II. SPECIFIC DESCRIPTION OF DISCOVERY THAT REMAINS TO BE** 10 **COMPLETED**

11 The depositions of Danielle Leleu and Eric Williams are pending. Plaintiffs are in
12 the process of scheduling the deposition of Houston Crosta. Plaintiffs anticipate
13 scheduling additional depositions upon receipt of Defendant's Answer.

14 15 16 **III. STATEMENT AS TO WHY THE DEADLINES CANNOT BE COMPLETED** 17 **WITHIN THE TIME LIMIT SET IN THE SCHEDULING ORDER**

18 **A. Failure to Comply with the Deadline is Due to Excusable Neglect**

19 Excusable neglect encompasses situations in which the failure to comply with a
20 filing deadline is attributable to negligence. *Lemoge v. U.S.*, 587 F.3d 1188, 1195 (9th
21 Cir. 2009). There are four factors in determining whether neglect is excusable: (1) the
22 danger of prejudice to the opposing party; (2) the length of the delay and its potential
23 impact on the proceedings; (3) the reason for the delay; and (4) whether the movant
24 acted in good faith. *Pioneer at Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507
25 U.S. 308, 395, 113 S. Ct. 1489, 123 L.Ed.2d 74 (1993). The determination of whether
26 neglect is excusable is at bottom an equitable one, taking account of all relevant
27
28

1 circumstances surrounding the party's omission. *Pioneer*, at 395. This equitable
2 determination is left to the discretion of the district court. *Pincay v. Andrews*, 389 F.3d
3 853, 860 (9th Cir. 2004).

4 In examining reasons for delay and good faith, the court should consider: (1)
5 whether the omission reflected professional incompetence, such as an ignorance of
6 the procedural rules; (2) whether the omission reflected an easily manufactured
7 excuse that the court could not verify; (3) whether the moving party had failed to
8 provide for a consequence that was readily foreseeable; and (4) whether the omission
9 constituted a complete lack of diligence. *Graber v. Zaidi*, 2010 U.S. Dist. LEXIS
10 93074, 2010 WL 3238918 (D. Nev. 2010) (*citing Pioneer*, 507 U.S. at 390-95).

11
12 Plaintiff submits that an application of the four factors merits a finding of excusable
13 neglect. First, there is no danger of prejudice to the opposing party, as this is a joint
14 Second Stipulation.

15
16 Second, the length of delay and its potential impact on the proceedings is minimal
17 – if any.

18
19 Third, the reason for the delay is due to a procedural issue that was not readily
20 foreseeable. Defendant is not required to file its Answer until fourteen (14) days after
21 the Court rules on Defendant's Motion to Dismiss. When the scheduling order
22 deadlines were agreed upon and a proposed Scheduling Order was tendered to the
23 Court, the Parties did not and could not have anticipated this extant issue.

24
25 Fourth, the Parties have acted in good faith, and have not filed this Second
26 Stipulation for any improper purpose, but rather to align the Discovery Deadline,
27
28

1 Dispositive Motion Deadline, and Joint Pre-Trial Order Deadline with the procedural
2 posture of the case.

3 B. Good Cause Exists to Grant the Relief Sought.

4 Fed. R. Civ. P. 16 authorizes the modification of a scheduling order “for good cause
5 and with the judge’s consent.” The good cause inquiry focuses on the diligence of the
6 party seeking to modify the scheduling order; if the party seeking the modification was
7 not diligent, the motion should be denied. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d
8 1080, 1087 (9th Cir. 2002). “The pretrial schedule may be modified ‘if it cannot
9 reasonably be met despite the diligence of the party seeking the extension.’” *Zivkovic*,
10 302 F. 3d at 1087 (quoting *Johnson*, 975 F. 2d at 609). Prejudice to the non-moving
11 party may serve as an additional reason to deny the motion, but the lack of prejudice
12 to the nonmoving party does not justify granting the relief sought if the moving party
13 was not diligent. *Johnson*, 975 F.2d at 607. Good cause may be found if the moving
14 party can show that it could not comply with the schedule due to matters that could
15 not have been reasonably foreseen at the time of the issuance of the scheduling order.
16 *Kuschnier v. Nationwide Credit, inc.*, 256 F.R.D. 684, 687 (E.D. Cal. 2009).
17
18
19

20 In this case, the Parties have been diligent in attempting to comply with the Local
21 Rules of Court, preparing the Scheduling Order, reviewing Initial Disclosures,
22 propounding Discovery Requests seeking information, documents and things relevant
23 to this cause, scheduling depositions, and filing this Motion before the current
24 Discovery Deadline, Dispositive Motion Deadline, and Joint Pre-Trial Order Deadlines
25 expire. Despite the Parties’ diligence, they are simply unable to meet the Discovery
26 Deadline, Dispositive Motion Deadline, and Joint Pre-Trial Order Deadline at this time
27
28

1 for the reasons set forth herein and could not have reasonably foreseen the current
2 procedural posture of the case.

3
4 **IV. PROPOSED SCHEDULE FOR COMPLETING REMAINING DISCOVERY**

5 Based on the foregoing, the Parties request the Court grant the Second Stipulation
6 and extend the Discovery Deadline, Dispositive Motion Deadline, and Joint Pre-Trial
7 Order Deadline as follows:
8

- 9 (1) Discovery shall be completed by November 29, 2021;
10 (2) Dispositive motions shall be filed and served by December 29, 2021; and
11 (3) Joint Pre-Trial Order shall be filed by January 28, 2022. In the event
12 dispositive motions are filed, the date for filing the Joint Pre-Trial Order shall
13 be suspended until thirty (30) days after the decision on the dispositive
14 motions or further Order of the Court (LR26-1(b)(5)).
15
16

17 DATED this 27th day of August, 2021.

18 /s/ Robert L. J. Spence, Jr.

19 Robert L. J. Spence, Jr. (*pro hac vice* approved)
20 Kristina A. Woo (*pro hac vice* approved)
21 80 Monroe Avenue, Garden Suite One
22 Memphis, Tennessee 38103
23 Telephone: 901.312.9160
24 Facsimile: 901.521.9550
25 rspence@spence-lawfirm.com
26 kwoo@spence-lawfirm.com

27 /s/ Carl E. G. Arnold

28 Carl E.G. Arnold (State Bar No.8358)
1428 S. Jones Blvd.
Las Vegas, Nevada 89146
Telephone: 702.358.1138

1 carl@cegalawgroup.com

2 *Attorneys for Plaintiffs*

3
4 /s/ Andrew M. Leavitt, Esq.
5 ANDREW M. LEAVITT, ESQ.
6 Nevada Bar # 3989
7 633 South Seventh Street
8 Las Vegas, Nevada 89101
9 andrewleavitt@ymail.com
Telephone: (702) 382-2800
Fax: (702) 382-7438

10 *Attorney for Defendant*

11
12 IT IS SO ORDERED:

13 
14 _____
15 Daniel J. Albregts
16 United States Magistrate Judge

17 Date: August 30, 2021
18
19
20
21
22
23
24
25
26
27
28